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BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1D-2002-63291
MARY M. BRKICH, P.T.A. 4691 Albany Circle, #131 San Jose, CA 95029 Physical Therapist Assistant License No. AT 3840 Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (AComplainant@) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On May 8, 1995, the Physical Therapy Board issued License Number AT-3840 to MARY M. BRKICH (ARespondent@). Said license is valid at the present time with an expiration date of December 31, 2004.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board (ABoard@), under the authority of the following sections of the Business and Professions Code (ACode@).

4. Section 2609 of the Code states:

The Board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2655 of the Code provides, in pertinent part:

AAs used in this article:

. . . .

(b) > Physical therapist assistant= means a person who meets the qualifications stated in Section 2655.3 and who is approved by the Board to assist in the provision of physical therapy under the supervision of a physical therapist who shall be responsible for the extent, kind, and quality of the services provided by the physical therapist assistant.

(c) >Physical therapist assistant= and >physical therapy assistant= shall be deemed identical and interchangeable.@

6. Section 2660 of the Code provides, in pertinent part:

AThe Board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

. . . .

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or

indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.@

COST RECOVERY

7. Section 2661.5 of the Code provides, in pertinent part:

A(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decisions.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board=s decision shall be conclusive proof of the validity of the order of payment and the terms for payment....@

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or

violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

9. **Ambien** is a non-benzodiazepine hypnotic of the imidasopyridine class. It is a dangerous drug as defined in section 4022, a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 of Title 21 of the Code of Federal Regulations. It is indicated for the short-term treatment of insomnia. It is a central nervous system depressant and should be used cautiously in combination with other central nervous system depressants. Any central nervous system depressant could potentially enhance the CNS depressive effects of Ambien. It should be administered cautiously to patients exhibiting signs or symptoms of depression because of the risk of suicide. Because of the risk of habituation and dependence, individuals with a history of addiction to or abuse of drugs or alcohol should be carefully monitored while receiving Ambien. The recommended dosage for adults is 10 mg. immediately before bedtime.

10. **Restoril, see temazepam.**

11. **Temazepam** is a hypnotic agent, sold under the trade name Restoril. It is a dangerous drug as defined in section 4022, a Schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 of Title 21 of the Code of Federal Regulations. Temazepam is indicated for the short-term treatment of insomnia (generally 7-10 days). Patients using temazepam should be warned about the possible combined effects with alcohol and other central nervous system depressants. As with any hypnotic, caution must be exercised in administering temazepam to individuals known to be addiction prone. The recommended usual adult dosage is one 15 mg. tablet before retiring.

12. **Vioxx** is a trade name for rofecoxib, a nonsteroidal anti-inflammatory drug that also exhibits analgesic and antipyretic activity. It is a dangerous drug as defined in

section 4022. Vioxx is indicated for relief of the signs and symptoms of osteoarthritis and for the management of acute pain in adults. Side effects may include serious gastrointestinal toxicity resulting in hospitalization and even fatality. Vioxx should, therefore, be prescribed with extreme caution for patients with a prior history of ulcer disease or gastrointestinal bleeding. Use of Vioxx in combination with aspirin may result in an increased rate of GI ulceration. Rare cases of severe hepatic reactions have been reported with nonsteroidal anti-inflammatories; patients with symptoms and/or signs of liver dysfunction using Vioxx should be carefully monitored. Vioxx may diminish the hypertensive effectiveness of ACE inhibitors. Vioxx therapy in geriatric patients should be initiated at the lowest recommended dose. The recommended starting dose for treatment of osteoarthritis is 12.5 mg. daily. The recommended starting dose for management of acute pain is 50 mg. once daily.

CAUSES FOR DISCIPLINE

FIRST CAUSE FOR DISCIPLINARY ACTION

(Aiding or Abetting an Unlicensed Person to Engage in the Practice of Medicine.)

13. Respondent is subject to disciplinary action under section 2660, subdivision (i) of the Code by virtue of her violations of sections 2234, 2234 (a), and 2264 of the Code in that she aided or abetted David Gray, an unlicensed person, in the practice of medicine. The circumstances are as follows:

14. From November 1997 until October 2000, Ms. Brkich worked as the physician assistant to Arthur Ting, M.D. at his medical practice at the Palo Alto Medical Clinic, Department of Sports Medicine. Throughout this period, David Gray, an unlicensed person variously described as an orthopedic technician or a cast technician, also worked in this medical practice. During the time Ms. Brkich worked at the Palo Alto Medical Clinic, Mr. Gray examined and diagnosed patients, made chart notes, ordered and interpreted the results of diagnostic tests, wrote prescriptions, recommended physical therapy, recommended surgery, advised patients of risks, benefits, and alternatives to surgery, and obtained the patient=s consent

to surgery. Dr. Ting=s staff regularly scheduled patients for initial appointments at times when neither Dr. Ting nor Ms. Brkich would be on the premises and available to see them. In such cases, these patients would be initially examined by Mr. Gray, acting alone and as if he were a physician. A number of these patients believed that Mr. Gray was a physician and some referred to him as ADr. Gray.@ Ms. Brkich was aware of Mr. Gray=s activities and assisted Dr. Ting in facilitating them. In short, Mr. Gray engaged in the unlicensed practice of medicine over an extended period of time and Ms. Brkich aided or abetted him in doing so. The following instances are illustrative, but by no means exhaustive:

15. On April 14, 2000 patient S.C.[1] went to the clinic for evaluation and treatment of a knee injury. At the clinic, she was examined by David Gray. After examination of Ms. C.=s knee, Mr. Gray diagnosed a vertical fracture of the right patella. He placed Ms. C. in a knee brace and recommended she return in 10 days. When Ms. C. returned on April 24, 2000, she was again examined by David Gray. April 24, 2000 was a Monday and the Session Comment on the staff calendar for that day read IN SURGERY ALL DAY DAVID ONLY! MARY OFF. On April 24, 2000, Mr. Gray advised Ms. C. to continue using the knee brace and crutches and to return in two weeks. Ms. C. returned to the clinic on May 8, 2000, at which point she was examined by Dr. Ting for the first time for this injury. On September 6, 2000, Ms. C. returned to the clinic with an injury to her thumb. Once again, she was examined by David Gray. Mr. Gray recommended surgery on the thumb and discussed the risks, benefits, and alternatives to the surgery with her. He placed her thumb in a thumb splint. Pursuant to Mr. Gray=s recommendation, Dr. Ting performed surgery on Ms. C.=s thumb on October 2, 2000. Ms. Brkich dictated Mr. Gray=s chart notes for Ms. C.=s visits of April 14, April 24, and September 6, 2000, falsely suggesting that it was she, rather than David Gray, who examined,

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1. In this Accusation, initials are used in place of the full names of Dr. Ting=s patients and non-patient recipients of prescription drugs in an effort to protect these individuals= privacy. The full names of these individuals are known to Respondent and records showing their full names will be produced in response to an appropriate request for discovery.

diagnosed, and treated the patient on those dates. Ms. C. was billed $88.00 for an office visit with Ms. Brkich on September 6, 2000, although she was seen by Mr. Gray and not Ms. Brkich on that date. In addition, Ms. C. was billed for $88.00 for an office visit with Dr. Ting and $76.00 for a knee brace on April 14, 2000 and $88.00 for an office visit with Dr. Ting on April 24, 2000 even though she was not seen or treated by Dr. Ting on either of those dates.

16. On August 21, 2000, patient M.B. went to the clinic for evaluation of a knee injury. August 21, 2000 was a Monday. As was typical for Mondays, Dr. Ting was scheduled to be in surgery at another location all day. When Mr. B. arrived, he was examined by David Gray, whom he believed to be a physician. Mr. Gray examined and manipulated Mr. B.=s knee, made notes of his examination, and expressed the opinion that Mr. B. had torn his anterior cruciate ligament (AACL@). Mr. Gray ordered an MRI, gave Mr. B. a knee brace and instructed him to wear it, and issued him a prescription for Motrin, 800 mg. Mr. Gray also advised Mr. B. that he could continue to play golf within his own discretion provided he wore non-cleated shoes. Mr. B. returned to the clinic on September 20, 2000, at which point he was examined by Dr. Ting, who also reviewed the MRI ordered by Mr. Gray. At that point, Dr. Ting diagnosed a stress fracture of the tibia rather than an ACL injury and advised Mr. B. to rest his knee. Ms. Brkich dictated Mr. Gray=s chart notes for Mr. B.=s visit of August 21, 2000, falsely suggesting that it was she, rather than David Gray, who examined the patient and ordered the MRI. Mr. B. was billed $166.00 for an initial office visit on August 21, 2000 with Ms. Brkich and $81.00 for the knee brace.

17. Patient T.K. made an appointment to see Ms. Brkich at Dr. Ting=s Palo Alto office on September 11, 2000 at 2:15 p.m. for evaluation of an injured right ankle. September 11, 2000 was a Monday; Dr. Ting was scheduled to be in surgery at another location all day. Ms. Brkich=s scheduling record for September 11, 2000 bears the following notation: APTS PALO ALTO 2-5 P.M. MARY IN SURG DAVID ONLY !!!@ When T.K arrived for his appointment, he was informed that Ms. Brkich had been called into surgery, but he could be seen

by ADavid.@ T.K. agreed. David Gray examined and manipulated T.K.=s ankle and reviewed x-rays of the ankle T.K. had brought to the office. Mr. Gray then advised T.K. that he was concerned that the ankle injury could cause damage to a ligament and also separation of the tibia and fibula. Mr. Gray ordered more x-rays, recommended physical therapy, and gave Mr. K. the paperwork authorizing the physical therapy. Mr. Gray also told Mr. K. to return to the clinic once the new x-rays were obtained so that he could be examined by Respondent. Mr. K. did return to the office on September 20, 2000, at which point Dr. Ting examined him. Other than the record of Mr. K=s scheduled appointment with Ms. Brkich, there is no record in Mr. K.=s chart of his visit to Dr. Ting=s office on September 11, 2000 or of his examination by Mr. Gray.

18. Patient P.C. made an appointment to see Ms. Brkich at Dr. Ting=s Palo Alto office on September 11, 2000 at 4:15 p.m. for evaluation of an injured shoulder. September 11, 2000 was a Monday; Dr. Ting was scheduled to be in surgery at another location all day. Ms. Brkich=s scheduling record for September 11, 2000 bears the following notation: APTS PALO ALTO 2-5 P.M. MARY IN SURG DAVID ONLY !!!@ When P.C. arrived for his appointment, he was seen by David Gray. Mr. Gray examined and manipulated Mr. C.=s shoulder and made notes of his examination. He then ordered an MRI. Mr. C. believed that Mr. Gray was a physician. On September 29, 2000, Mr. C. returned to the office for further examination and review of the MRI ordered by Mr. Gray. Other than the record of Mr. C=s scheduled appointment with Ms. Brkich, there is no record in Mr. C.=s chart of his visit to the office on September 11, 2000 or of his examination by Mr. Gray.

19. Based on the foregoing facts, Respondent is guilty of unprofessional conduct pursuant to section 2660 on the basis of her violations of sections 2264, 2234, and 2234(a) in that she aided, and/or abetted David Gray, an unlicensed person, in the practice of medicine.

SECOND CAUSE FOR DISCIPLINARY ACTION

(Dishonesty, Falsification of Medical Records, Failure to Maintain Adequate Medical Records)

20. Respondent is subject to disciplinary action under section 2660 by virtue of her violations of sections 2234, 2234(e) and (f), 2261, 2262, 2266, and 480(a)(2) in that she falsified medical records.

21. As noted previously, Ms. Brkich dictated notes of David Gray=s examinations, diagnoses, and treatment of patients, including but not limited to patients S.C. and M.B., in such a way as to suggest that she, and not David Gray, had examined them. In some cases, these patients were billed for examinations by Mary Brkich or by Dr. Ting, although neither had seen them. Under section 2260, this constituted unprofessional conduct on the part of Ms. Brkich in that she violated sections 2234 (unprofessional conduct), 2234(e) (act of dishonesty substantially related to the qualifications, functions, and duties of a physician and surgeon), 2234(f) (act which would have warranted denial of a certificate), 2261 (false documents), 2262 (creating false medical records), 2266 (failure to maintain adequate and accurate medical records), and 480(a)(2) (act of dishonesty).

THIRD CAUSE FOR DISCIPLINARY ACTION

(Exceeding the Scope of Permitted Medical Services; Prescribing Without a Good Faith Prior Examination; Failure to Maintain Adequate Medical Records)

22. Respondent is subject to disciplinary action pursuant to section 2660 by virtue of her violations of sections 2234, 2234(e), 2238, 2242, 2261, 2262, and 2266 of the Code, in conjunction with section 3502.1 of the Code and section 1399.451 of Title 16 of the California Code of Regulations. The circumstances are as follows:

23. On August 8, 2000, Mary Brkich, using Dr. Ting=s DEA number, issued a prescription in the name of her mother, D.B. D.B. lived in southern California, approximately 360 miles from Dr. Ting=s office. Ms. Brkich telephoned this prescription in to a pharmacy in the town where D.B. resided. As originally issued, the prescription was for 30 Vioxx 25 mg. tablets, to be taken one per day, and for 30 Ambien 5mg. tablets. Vioxx and Ambien are both dangerous drugs; Ambien is a Schedule IV controlled substance. When the pharmacy informed

Ms. Brkich that some of these medications were not covered and/or required prior health insurance authorization, she changed the prescription to call for 21 Restoril, 7.5 mg.. Restoril is a dangerous drug and a Schedule IV controlled substance. When interviewed, D.B. stated that the prescription had been issued after a telephone conversation she had with her daughter, that it was actually not for her but for her husband, and that Dr. Ting had formerly been the family doctor.

24. Both section 3502.1, subdivision (c)(2), and Title 16, California Code of Regulations, section 1399.541, subdivision (h), provide that a physician assistant may not administer, provide or transmit a prescription for controlled substances in Schedules II through V inclusive without advance approval by a supervising physician for that particular patient. In addition, section 3502.1, subdivision (e), and Title 16, California Code of Regulations, section 1399.541, subdivision (h) provide that the medical record of any patient cared for by a physician assistant for whom the physician=s prescription has been transmitted or carried out shall be reviewed and countersigned and dated by the supervising physician within 7 days.

25. The Palo Alto Medical Clinic has been unable to produce any medical records pertaining to D.B.

26. Based on the foregoing facts, Respondent is guilty of unprofessional conduct under section 2660 by virtue of her violations of sections 2234 (unprofessional conduct), 2234(e) (act of dishonesty substantially related to the qualifications, functions or duties of a physician and surgeon), 2238 (violation of statutes and regulations relating to dangerous drugs and controlled substances), 2242 (prescribing dangerous drugs without good faith prior examination and medical indication therefor); 2261 (false documents); 2262 (creating a false medical record); and 2266 (failure to maintain adequate and accurate records).

FOURTH CAUSE FOR DISCIPLINARY ACTION

(Dishonesty)

27. Respondent is subject to disciplinary action pursuant to section 2660 by virtue of her violations of sections 2234, 2234(e) and (f), and 480(a)(2) of the Code. The circumstances are as follows:

28. On November 16, 2000 Ms. Brkich was interviewed by representatives of the Medical Board of California and of the Drug Enforcement Administration. During this interview, Ms. Brkich falsely stated that she knew of no instances in which David Gray had treated patients alone. She falsely stated that she only dictated notes written by David Gray in cases in which Mr. Gray had taken notes for Dr. Ting while Dr. Ting treated the patients. She falsely stated that no prescriptions were issued from the office while Dr. Ting was in surgery. She falsely stated that on Mondays, when Dr. Ting was in surgery, the only patients scheduled for appointments were either receiving casts or having casts or sutures removed.

29. These acts of dishonesty were done with the intent to benefit herself, Dr. Ting, and Mr. Gray by sparing them from criminal prosecution and/or disciplinary action. Accordingly, they constitute acts in violation of sections 480(a)(2), 2234, and 2234(e) and (f) and cause for disciplinary action under sections 2234 and 2660.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board issue a decision:

1. Revoking or suspending License Number AT 3840 issued to MARY M. BRKICH;

2. Ordering MARY M. BRKICH to pay the Physical Therapy Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code sections 2661.5 and 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 01/21/03_____

Original Signed By_____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant